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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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02/221,704 04/01/94 HORST

F FEH090

EXAMINER

DO, L

31M1/0227

ART UNIT

PAPER NUMBER

5

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3103

DATE MAILED:

02/27/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474..
6. _____

Part II SUMMARY OF ACTION

1. Claims _____ 1-3 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims _____ 1-3 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Art Unit: 3103

Part III DETAILED ACTION

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The disclosure is objected to because of the following informalities: on page 9, line 14, the "a have" should be deleted; on page 12, line 23, the "transmitter 40" and "receiver 40" are inconsistent. Appropriate correction is required.
3. Claims 1-3 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-3, lines 8, 25, and 7, respectively, "the locomotive" lacks proper antecedent basis.

Claim 3 is indefinite and incomplete since there is insufficient structure to carry out the function of lines 11-14. The structure to provide tractive power has not been recited. At amendment the claim should be clear as to whether the subcombination remote control is being claimed or a combination with other locomotive drive structure.

Art Unit: 3103

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

5. Claims 1 and 2 are rejected under 35 U.S.C. § 103 as being unpatentable over Astley (US Patent 4,687,258) in view of Burke Jr. (US Patent 3,687,082) and Nichols et al (US Patent 5,039,038).

Astley discloses a locomotive remote control system comprising a transmitter 64, a slave controller 24, a receiver

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52, and a processor 56 (see col. 4, lines 28-48). Astley lacks a velocity sensor means and a binary coded signal.

Burke Jr teaches the known use of a velocity sensor means for generating data representing velocity of the locomotive (see col. 4, lines 1-9 and col. 7, lines 18-45).

Nichols et al teaches the known use of the transmitter having a binary coded radio frequency signal in the railway system (see col. 9, lines 17-18).

It would have been an obvious to one having ordinary skill in the art at the time of the invention to have provided the assembly of Astley with a means sensitive to velocity as taught by Burke Jr so as to make the device of Astley more sensitive to the power requirements of the locomotive such as when traveling up or down a grade.

It would have been an obvious to one having ordinary skill in the art to have provided the assembly of Astley with a binary coded signal, or any infrared or other signals well known in the art as taught by Nichols et al since it is commonly used and available.

Re-claim 1, Burke Jr is merely relied upon as exemplary of the known use of the desired rate of speed for increasing or decreasing to maintain the desired speed along the track.

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6. Claim 3 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Linh Do whose telephone number is (703) 308-2083.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

LND *LD*
February 21, 1995

LINH DO
PATENT EXAMINER
GROUP 3100

Robert J. Schlueter 2/21/95
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